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No. 128

IN RE BARBARA BURRUS, et al.,

Petitioners,

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF FOR PETITIONERS

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TABLE OF CONTENTS

	Page
CITATIONS TO OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
QUESTION PRESENTED	2
STATEMENT	2
SUMMARY OF ARGUMENT	9
ARGUMENT	11
The Rights of Black Juveniles Under the Sixth and Fourteenth Amendments Were Violated When They Were Denied Trial by Jury on the Issue of their Delinquency in Juvenile Court Proceedings which could have Resulted in their Incarceration for Periods of from Six to Ten Years	11
CONCLUSION	31

INDEX TO APPENDIX

Article I, § 13, Constitution of North Carolina	34
North Carolina General Stats. §§ :	
7A-278	34
7A-279	35
7A-281	35
7A-282	36
7A-283	36
7A-284	36
7A-285	37
7A-286	38
7A-287	43
14-3	44
110-21	44
110-22	45
110-23	46
110-24	46
110-25	47
110-26	47
110-27	48

Page

110-29 48
110-32 51

TABLE OF CASES

Baldwin v. New York, 38 U.S. L. Week 4554 (1970) ..... *passim*
Baxstrom v. Herold, 383 U.S. 107 (1966) 28
Bloom v. Illinois, 391 U.S. 194 (1968) ..... *passim*
Callan v. Wilson, 127 U.S. 540 (1888) 13
Carter v. Jury Commission of Green County, 396 U.S. 320 (1970) 21
Cheff. v. Schnackenberg, 384 U.S. 373 (1966) 13
Dendy v. Wilson, 142 Tex. 460, 179 S.W. 2d 269 (1944) 23
De Stefano v. Woods, 392 U.S. 631 28
District of Columbia v. Colts, 282 U.S. 63 (1930) 12
Douglas v. California, 372 U.S. 353 (1963) 28
Duncan v. Louisiana, 391 U.S. 145 (1968) ..... *passim*
Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216 (1968) ... 14
Ex parte Milligan, 71 U.S. 2 (1866) 28
Fay v. Noia, 372 U.S. 391 (1963) 28
Frank v. United States, 395 U.S. 147 (1969) 14
Gideon v. Wainwright, 372 U.S. 335 (1963) 28
Gilbert v. California, 388 U.S. 263 (1967) 28
Glasser v. United States, 315 U.S. 60 (1941) 21
Green v. United States, 356 U.S. 165 (1958) 28
In Re Burrus, 169 S.E. 2d 879 (1969) 1, 7, 8
In Re Corey, 72 Cal. Rptr. 115 (C.A. 1st Div. 1968) 20
In Re Daniel Richard D., 34 A.D. 2d 41 (1970) 30
In Re Juvenile Delinquents, 60 Misc. 2d, 355, 303 N.Y.S. 20, 406 (1969) 19

Page

In Re Gault, 387 U.S. 1 (1967) ..... *passim*
In Re Lambert, 203 F.2d 607 (D.C. Cir. 1953) 11
In Re Oliver, 333 U.S. 257 (1948) 22
In Re Rindell, 2 Cr. L. Rptr. 3121 (1968) 29
In Re Shelton, 5 N.C. App. 487, 168 S.E., 2d 695 (1969) ... 1, 7
In Re Whittington, 391 U.S. 341 (1968)..... 7
In Re Winship, 12 L. Ed. 2d 368 (1970) ..... *passim*
Jackson v. Denno, 378 U.S. 368 (1964) 19
Johnson v. New Jersey, 384 U.S. 719 (1966) 28
Kent v. United States, 383 U.S. 541 (1966) 7, 16, 24, 26
Linkletter v. Walker, 381 U.S. 618 (1965) 28
Matter of Elmore, 222 A.2d 255 (D.C. Ct. App. 1966)..... 11
Nieves v. United States, 280 F.Supp. 994 (S.D. N.Y. 1968) ... 29
Peyton v. Nord, 79 N.M. 717, 438 P.2d 716 (1968)..... 29
State v. Burris, 3 N.C. App. 35, 164 S.E. 2d 52 (1968) 12
State v. Cronin, 220 La. 233; 56 So. 2d 242 (1951) 23
State v. Sherron, 4 N.C. App. 386, 166 S.E. 2d 836 (1969) ... 13
Stovall v. Denno, 388 U.S. 283 (1967) 28
United States v. Wade, 388 U.S. 218 (1967) 28
Williams v. Florida, 38 U.S. L. Week 4557 (1970) 13, 31

TABLE OF STATUTES AND CONSTITUTIONAL PROVISIONS

Article I, §13, North Carolina Constitution 11
Ala. Code, Tit. 30, §21 21
Colo. Rev. Stat. Ann. §37-8-2 (1964) 29
D.C. Code Encyclopedia §16-2307 (1961) 29
Kan. Gen. Stat. Ann. §38-808 (Supp. 1967) 29
Mich. Comp Laws Ann. Ch. 712A.17 (1968) 29

Page

Mont. Rev. Codes Ann. §10-603 (1947) 29
N.C. Gen. Stat. §7A-272 15
N.C. Gen. Stat. §7A-285 ..... 15, 22
N.C. Gen. Stat. §7A-286 14
N.C. Gen. Stat. §14-3 ..... 3, 12
N.C. Gen. Stat. §14-132 ..... 3, 11
N.C. Gen. Stat. §14-273 ..... 3, 11
N.C. Gen. Stat. §15-157 12
N.C. Gen. Stat. §20-174.1 ..... 3, 11
N.C. Gen. Stat. §110-22 14
N.C. Gen. Stat. §110-23 ..... 15, 20
N.C. Gen. Stat. §110-24 ..... 4, 15, 22
N.C. Gen. Stat. §110-29 ..... 8, 14, 15
N.C. Gen. Stat. §110-32 ..... 8, 14
N.C. Gen. Stat. §134-108 ..... 6, 20
New Mexico Stat. Ann. §13-8-49 30
Okla. Stat. Ann. Tit. 10 §1110 (Supp. 1968) 29
S.D. Code §27-8-31 (1967) 29
Tex. Rev. Civ. Stat. Ann. 2338-1, §13(6) (Vernon Supp. 1968) 29
W. Va. Code Ann. §49-5-6 (1966) 29
Wisc. Stat. Ann. §48.25(2) (1957) 29
Wyo. Stat. Ann. §14-108(c) (1961) 29

TABLE OF OTHER AUTHORITIES

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Page

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Glen, Bisurcates Hearings in Juvenile Court, 16 Crime and Delinquency, 255 (1970) 20

Hyde County, North Carolina: School Boycott and the Roots of Conflict (N.E.A. 1969) 3

Juvenile Delinquency and Youth Crime (President's Commission on Law Enforcement and the Administration of Justice, 1967) 22, 30

Kalven & Zeisel, The American Jury (1966) 26, 30, 31

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Newman, Conviction: The Determination of Guilt or Innocence Without Trial (1966) 31

Paulsen, Kent v. United States, The Constitutional Context of Juvenile Cases, 1966 Supt. Ct. Rev. 18, 25

Refusal to Modify Court Rule that Names of Juveniles be Withheld from Press, 14 Crime and Delinquency 261 (1968) 22

Report of the National Advisory Commission on Civil Disorders (Bantum, ed.) 303 24

The Challenge of Crime in a Free Society, (President's Commission on Law Enforcement and the Administration of Justice, 1967) 24, 26, 27, 33

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CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of North Carolina is reported at 169 S.E. 2d 879 and appears in the Appendix at pp. 324-44.

The opinions of the North Carolina Court of Appeals in *In Re Burrus* and *In Re Shelton* are reported at 4 N.C. App. 523, 167 S.E. 2d 254; 5 N.C. App. 487, 168 S.E. 2d 695 (1969) and are set forth in the Appendix at pp. 303-15; 318-20.

JURISDICTION

The judgment of the Supreme Court of North Carolina was entered on October 16, 1969. (A. 345) The petition for writ of certiorari was filed January 12, 1970 and granted April 20, 1970. (A. 346)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Sixth and Fourteenth Amendments to the Constitution of the United States.

This case also involves North Carolina constitutional and statutory provisions, reprinted in an appendix to this brief, *infra* pp. 1a, *et seq.*

QUESTION PRESENTED

Were petitioners' rights under the Sixth and Fourteenth Amendments violated when they were denied trial by jury, on the issue whether they had violated state criminal laws, in juvenile court proceedings which could have resulted in their incarceration for periods of from six to ten years, respectively?

STATEMENT

Juvenile petitioners, ranging in age from 11 to 15 years, their parents and guardians, were summoned to hearings on various dates in January, 1969, before the District Court of Hyde County, North Carolina, upon petitions charging the juveniles with various unlawful acts committed in the county. The charges arose out of a series of demonstrations staged in Hyde County during the months of September through December, 1968, by black adults and children who believed that assignments of students and a plan con-

solidating several of the county public schools discriminated against black school children.[1] (A. 171-72, 195).

The petitions, filed by North Carolina state highway patrolmen, requested that the court hear and determine each case and, if necessary, give the named juvenile "such oversight and control as will promote the welfare of such child and the best interest of the State." (E.g., A. 2-3). With one exception, each petition, as amended prior to trial on motion of the state solicitor, charged that the named juvenile did "willfully, intentionally, and unlawfully" stand upon the highway or street in such a manner as to "impede the regular flow and normal traffic, of motor vehicles and their operators" N.C. Gen. Stat. § 20-174.1[2] (E.g., A.2; 98). In the case of one juvenile, James Lambert Howard, the petition charged that he "knowingly, willfully and unlawfully" made riotous noises and became disorderly in the O. A. Peay School in Swan Quarter, North Carolina, in violation of N.C. Gen. Stat. § 14-132,[3] and also interrupted and disturbed the O. A. Peay School and defaced school furniture while the school was in regular session in violation of N.C. Gen. Stat. § 14-273[4] (A. 137-38).

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[1]The events which led to petitioners' arrests are described in the report of investigators from the National Educational Association who conducted an extensive inquiry in 1969 at the request of the North Carolina Teachers Association. *Hyde County, N.E.A., North Carolina: School Boycott and the Roots of Conflict* (N.E.A.; 1969)

[2]A violation of N.C. Gen. Stat. § 20.174.1 constitutes a misdemeanor and is punishable by fine, by imprisonment for a term not exceeding two years, or by both. *State v. Spencer*, 173 S.E.2d 765, 774-75, 276 N.C. 535 (1970).

[3]A violation of N.C. Gen. Stat. § 14-132 constitutes a misdemeanor, punishable under N.C. Gen. Stat. § 14-3(a) by fine, by imprisonment for a term not exceeding two years, or by both.

[4]A violation of N.C. Gen. Stat. § 14-273 constitutes a misdemeanor, punishable under N.C. Gen. Stat. § 14-3(a) by fine, by imprisonment for a term not exceeding two years, or by both.

Parents and persons having custody over each juvenile received a summons ordering them to show cause why the children "should not be dealt with according to the provisions of the North Carolina Juvenile Law" (E.g., A. 54). Cases arising out of demonstrations which had occurred at the same time and place were consolidated for hearing, findings, by the court, and disposition, (E.g. A. 143). A total of forty-four cases were heard in nine separate hearings on January 9 and 10, 1969 (A. 143-273). Two cases were heard separately on January 21, 1969 (A. 285-96). In some instances more than one petition was filed charging the same juvenile with obstruction of traffic on different dates.

Prior to each hearing the trial judge stated in open court that he was about to conduct juvenile hearings, not criminal trials, and that in no event would any child be found to have committed a crime, but that the court would "proceed upon the theory that a child under its jurisdiction is the ward of the State and is subject to the discipline and entitled to the protection which the Court should give such child under the circumstances disclosed in the case" (E.g. A. 144-45). The district judge ordered the general public excluded from the hearing room, over the objection of counsel for the juveniles,[5] pursuant to N.C. Gen. Stat. § 110-24, which provides that "in the hearing of any case coming within the provisions of [the Juvenile Court Act] the general public may be excluded and only such persons admitted thereto as have a direct interest in the case." Parents or guardians of the juveniles and witnesses were allowed to remain (E.g., A. 143).

Prior to each hearing, counsel for the juveniles requested a trial by jury; in each instance this request was denied (E.g., A. 144). Counsel for the juveniles also moved to dis-

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[5]At the hearings in the cases of Selma Shelton and John Green Cunningham on January 12, 1969, counsel did not object to the exclusion of the general public (A. 285-86; 292).

miss each petition on the ground that provisions of the Juvenile Court Act then in force, N.C. Gen. Stat. §§ 110-21 *et seq.*, were unconstitutionally vague and overbroad, depriving the juveniles of equal protection and due process of the law (E.g., A. 144). The motions were denied in each instance and the court proceeded to hear the evidence. (Ibid). In each case, with the exception of James Lambert Howard's, the state's evidence consisted of the testimony of a highway patrolman. The juveniles did not testify in their own behalf, nor did they present any witnesses, but each patrolman was cross-examined by petitioners' counsel. (E.g., A. 145-50).

The testimony of the highway patrolmen was in essence that on various occasions in November and December, 1968, they observed the juveniles walking along North Carolina Highway 264 in Swan Quarter, North Carolina, in the vicinity of the county courthouse (A. 145, 168, 191, 212) or near a Methodist Church. On these occasions, the groups sang "freedom" songs, shouted and clapped their hands, carried signs, played catch with a basketball, or carried chickens. (A. 146, 168, 192, 212, 262, 264). As a result there was some interference with vehicular traffic (Ibid). Those demonstrators who failed to leave the paved portion of the highway after receiving a warning that they were committing a crime were placed under arrest for violation of the criminal law (E.g., A. 147-149, 216).[6] Juveniles who incorrectly stated that they were more than sixteen years

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[6]In the case of James Lambert Howard, a patrolman testified that he saw Howard in the principal's office at the O. A. Peay School on December 5, 1968, moving furniture with fifteen other persons (A. 251). Although he did not know of any other act which Howard committed nor of any specific statement which Howard made while in the office (A. 253), the office was in disarray (A. 252). The principal of the O. A. Peay School testified that James Howard was not a student at the school and had not been authorized to enter his office (A. 250).

old at the time of their arrest were held on bail. When they were later ascertained to be under sixteen years of age, juvenile petitions were filed. (A. 149, 193, 216-17, 258).

Subsequent to vigorous cross-examination of this testimony, petitioners' counsel renewed the motion to dismiss the cases against the juveniles (E.g., A. 149). In each instance the motion was denied (E.g., A. 150). The trial court then found as a fact in each case that the juvenile had committed "an act for which an adult may be punished by law" (E.g. A. 150) and that each was "in need of the care, protection and discipline of the state, and is in need of more suitable guardianship" (A. 150-51). The court entered an order in each case committing the juvenile "to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents . . . and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State."[7] (E.g., A. 151). The court, however, suspended the commitment of each juvenile and placed them each on probation for terms of either twelve or twenty-four months on condition (E.g., A. 151):

(1) that the juvenile violate none of the laws of North Carolina;

(2) that he or she report to the Hyde County Department of Welfare at least once each month;

(3) that he be home by 11:00 o'clock each evening;

(4) that he attend an institution offering training approved by the Hyde County Director of Public Welfare.

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[7]At the time the order was entered final discharge from such an institution was required to be granted any person upon reaching his twenty-first birthday, N.C. Gen. Stat. § 134-108.

On appeal to the North Carolina Court of Appeals, the juveniles consolidated the forty-four cases heard on January 9, and 10, 1969, into one record. (A. 303). After characterizing the conduct of the youths as

> . . . a concerted demonstration by Negroes of Hyde County to assert their defiance of law and order to disrupt the normal economic and social life of Hyde County by a wilful, intentional and flagrant disregard and violation of laws duly enacted by the governing bodies of the state for the public welfare and orderly conduct of human affairs for all citizens of the state (A. 307).

the Court of Appeals unanimously held that neither the United States Constitution nor the Constitution of North Carolina requires a jury trial in juvenile court proceedings. *In Re Burrus*, 4 N.C. App. 523, 167 S.E. 2d 454 (1969). The court also held that the North Carolina Juvenile Court Act was not unconstitutional because of vagueness; that petitioners had no constitutional right to a public trial; and that they had not been denied the right to appeal in forma pauperis (A. 307-15).

The two cases heard separately on January 21, 1969, were also consolidated on appeal. The Court of Appeals noted that the constitutional questions presented were raised in identical language in *In Re Burrus, supra*, and held, for the reasons enunciated in *Burrus*, that the Juvenile Court Act was not unconstitutional and that the constitutional rights of the juveniles were not violated because they were not afforded jury trials. *In Re Shelton*, 5 N.C. App. 487, 168 S.E. 2d 695 (1969).

In Re Burrus and *In Re Shelton, supra*, were consolidated on appeal to the Supreme Court of North Carolina, and that Court also rejected petitioners' claim that they were entitled to a jury trial by the Sixth and Fourteenth Amendments. After citing *Kent v. United States, infra, In Re Gault, infra, Duncan v. Louisiana, infra*, and *In Re Whittington*, 391 U.S. 341 (1968) the Court stated:

> These cases enumerate the basic requirements of due process that must be satisfied in juvenile proceedings; however, the right to jury trial is not listed among them. We have not found and counsel has not cited any case supporting the right to jury trials in juvenile proceedings. We therefore adhere to our former decisions and hold that a juvenile is not entitled to a jury trial in a juvenile court proceeding on the issue of his delinquency. (*In Re Burrus*, 169 S.E. 2d 879, 886 (1969).) (A. 334).[8]

Two judges dissented without opinion.

The Supreme Court also modified the order of commitment that the district judge entered in each case prior to placing the child on probation holding that the dispositions authorized by N.C. Gen. Stat. § 110-29 are alternative, and that two or more may not be employed in the same judgment. Thus, the court deleted that portion of the order of the district court which adjudged that (1) the juveniles be committed and (2) the commitment be suspended. The Court made clear, however, that the district judge may modify the "duration and conditions" of petitioners' probation "at any time," and may revoke probation "at any time the court finds the conditions of probation have been breached. The court may then commit the juvenile or make such other disposition as it might have made at the time the child was placed on probation." (A. 343-44)[9]

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[8]The Supreme Court also rejected claims that juvenile is entitled to a public trial, that the statute petitioners were found to have violated was vague and that petitioners were denied an appeal in forma pauperis.

[9]As the Supreme Court noted, its modification of the district court's order was subject to the Juvenile Court Act provision that "if the court believes that the welfare of such child will thereby be promoted, the probation may be revoked at any time and the court may make such other disposition of the child as it might have made at the time the child was placed on probation." N.C. Gen. Stat. § 110-32.

SUMMARY OF ARGUMENT

In Re Gault, 387 U.S. 1 (1967) established that juveniles charged with delinquency must be tried in conformity with due process. *Duncan v. Louisiana*, 391 U.S. 145 (1969), *Bloom v. Illinois*, 391 U.S. 194 (1968) and *Baldwin v. New York*, 38 U.S.L. Week 4554 (June 20, 1970) established the right to a jury as an element of due process in a trial which might result in a serious infringement of personal liberty. Together these cases compel the conclusion that juveniles subject to incarceration for from six to ten years have a right to jury trial guaranteed by the Fourteenth Amendment, despite the fact that trial takes place in a juvenile court.

The benefits supposedly conferred by a juvenile court system do not support denial of the right to jury trial. The primary benefits to youth that are claimed by juvenile court proponents relate to discretionary intake procedures (which permit disposition short of adjudication) and flexible sentencing (which permits emphasis on rehabilitation). Assuming the dubious proposition that the men, money and understanding necessary to realize these benefits are generally available, their realization does not depend upon or justify dispensing with a jury as the means for trying contested factual questions after it has been determined that formal adjudication is required to establish the susceptibility of a juvenile to any coercive disposition by the court.

What is done with an individual after it is adjudged that he is a delinquent is a very different matter than the process of adjudging him a delinquent. Informality and flexibility may be preserved at the dispositional stage without inviting the dangers and risks which they present at the adjudicatory, fact-finding stage. As recognized by North Carolina law, the purpose of the adjudicatory stage is to determine whether the juvenile has violated a criminal statute, not what rehabilitation is appropriate. This purpose is indistinguishable from that of a criminal trial, and provides no basis for relaxing the safeguards constitutionally neces-

sary at such a trial. Nor can considerations of privacy justify denial of a jury to those juveniles who wish one, for the judge retains ample discretion to regulate reporting and public observation of juvenile court proceedings.

A jury trial can play an important role to protect youth against the commonly observed abuses of the enormous discretion granted those administering juvenile courts—a discretion which often has been employed to the detriment of racially and economically disadvantaged groups. It can guard the juvenile against the political or the case-worn judge, against consideration of inadmissable evidence, and against judicial credulity of the testimony of witnesses such as police officers or juvenile officers who may have close working relationships with the courts.

This Court has never refused to require procedural protections against arbitrariness because they might prove costly; but, in any event, the available evidence suggests overwhelmingly that such practical problems as may arise from providing jury trials in juvenile courts are manageable. A substantial number of jurisdictions now make jury trials available without ill effect. As in the criminal courts, only a relatively small number of cases will actually be disposed of by jury trial. All the states, moreover, are familiar with the administration of jury trials in even minor cases.

The record of juvenile court administration simply fails to justify any abridgement of the procedural guarantees which are recognized as necessary where a significant infringement of liberty is threatened. Research and experience have confirmed the premise, on which this Court's *Gault* decision is based, that juvenile courts have not fulfilled the promises which were early supposed to excuse abbreviated procedures. No colorable reason exists, therefore, why a procedural protection traditionally accorded in criminal proceedings should be denied to young persons subject to involuntary incarceration for lengthy periods.

ARGUMENT

THE RIGHTS OF BLACK JUVENILES UNDER THE SIXTH AND FOURTEENTH AMENDMENTS WERE VIOLATED WHEN THEY WERE DENIED TRIAL BY JURY ON THE ISSUE OF THEIR DELINQUENCY IN JUVENILE COURT PROCEEDINGS WHICH COULD HAVE RESULTED IN THEIR INCARCERATION FOR PERIODS OF FROM SIX TO TEN YEARS.

When petitioners were adjudicated delinquents upon a finding that they had violated state criminal laws,[10] they were thereby rendered liable to incarceration in a state institution for periods of from six to ten years. Had they been adults, subjected to charges carrying such penalties, plainly the Constitution of the United States–as well as North Carolina law[11]–would have given them an absolute right to trial by jury. For in *Duncan v. Louisiana*, 391 U.S. 145 (1968), this Court held applicable to the states the Sixth Amendment's requirement of trial by jury in all seri-

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[10]This case does not raise the question of the right to jury trial in juvenile proceedings which do not involve a charge of violation of state criminal laws. Persons alleged to be "in need of supervision," see *In Re Winship*, 25 L.Ed 2d 368, 373, n. 1 (1970), truants, neglected children and "incorrigibles" may not be charged with criminal offenses. The issues raised by such allegations may not involve the resolution of contested questions of fact. Cf. *In re Lambert*, 203 F.2d 607 (D.C. Cir. 1953); *Matter of Elmore*, 222 A.2d 555 (D.C. Ct. App. 1966).

[11]An adult charged with any one of the several offenses which constituted the delinquency of these juveniles would have been entitled to a trial by jury under state law. With one exception petitioners were charged with "impeding the regular flow of "traffic" in violation of N.C. Gen. Stat. § 20-174.1, an offense punishable by a fine up to two years imprisonment. One juvenile, James Lambert Howard, was charged with violations of two statutes (N.C. Gen. Stat. §§ 14-132; 273), the maximum periods of incarceration for which were not to exceed two years, respectively, see N.C. Gen. Stat. § 14-3(a).

Article I, § 13 of the North Carolina Constitution provides:

> "No person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful persons in open

ous criminal prosecutions, as distinguished from petty offenses. The Court held that "the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which—were they to be tried in a federal court—would come within the Sixth Amendment's guarantee." (391 U.S. at 149).

The determination whether a crime is a serious offense for Sixth Amendment purposes is made primarily by examination of the sentence authorized by law (not the penalty actually imposed) for the offense. Some offenses, assuredly, may require jury trial because of their moral gravity regardless of penalty, *e.g., District of Columbia v. Colts,* 282 U.S. 63 (1930); but it is also settled that "the penalty authorized for a particular crime is of major relevance in determining whether it is serious or not and may in itself, if severe enough, subject the trial to the mandates of the Sixth Amendment. *District of Columbia v. Clawans,* 300 U.S. 617 (1937)." *Duncan v. Louisiana, supra,* 391 U.S., at 159-160. This is so not merely because penalty may serve " 'as a guage of . . . social and ethical judgments,' " id., at 160, but also because the placing of the jury trial line involves a weighing of "the possible consequences to defendants from convictions" against the "benefits to efficient law enforcement and simplified judicial ad-

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court. The Legislature may, however, provide other means of trial, for petty misdemeanors, with the right of appeal."

The North Carolina Legislature has not exercised its power to provide other means of trial for misdemeanors—defined generally as crimes for which the punishment is not more than two years incarceration. N.C. Gen. Stat. § 14-3; *State v. Burris*, 3 N.C. App. 35, 164 S.E. 2d 52 (1968). On the contrary, the Legislature has provided (N.C. Gen. Stat. §§ 7A-196; 15-157, 177.1) that in even the most minor offenses either the complainant or the accused may demand a trial *de novo* by a jury.

ministration" of nonjury trials, *ibid.*[12] As the Court held in *Baldwin v. New York, supra* at n. 6 "a potential sentence in excess of six-months imprisonment is sufficiently severe by itself to take the offense out of the category of 'petty' ".

Applying this standard in *Duncan*, the Court held that Louisiana could not without a jury trial convict a man for simple battery when the offense carried a possible prison sentence of two years.[13] In *Baldwin, supra,* it was held that a potential penalty in excess of six months requires a right to jury trial. In *Bloom v. Illinois*, 391 U.S. 194 (1968), the Court ruled that criminal contempts entailing severe penalties were similarly not punishable without trial by jury. Applying the rule of *Cheff v. Schnackenberg*, 384 U.S. 373 (1966), which requires consideration of the penalty actually imposed under contempt statutes punishing a wide range of offenses without any specified maximum term, the Court found that the penalty imposed on Bloom—

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[12]The point is made most forcefully in the contempt cases, *Cheff v. Schnackenberg*, 384 U.S. 373 (1966), and *Bloom v. Illinois*, 391 U.S. 194 (1968), that severe penalties (whether authorized or actually imposed) are not mere gauges of moral seriousness, but independent determiners of a sort of seriousness which requires jury trial. This is so because, under *Cheff* and *Bloom*, identical contemptuous acts—having, obviously, identical moral gravity—are subject to jury or nonjury trial depending on penalty alone.

[13]Under North Carolina law a defendant charged with a misdemeanor must first submit to trial without a jury in the district court before obtaining a trial *de novo* in superior court before a jury. N.C. Gen. Stat. § 7A-196; *State v. Sherron*, 4 N.C. App. 386, 166 S.E. 2d 836 (1969); compare *Callan v. Wilson*, 127 U.S. 540 (1888). But whether North Carolina must accord the identical form of jury trial presently required by the Sixth Amendment in a criminal court is not an issue presented by petitioners in this case. Their submission is that they are entitled to adjudication by a lay jury rather than a judge. They make no contention as to the required number of jurors, cf. *Williams v. Florida*, 38 U.S.L. Week 4557 (June 20, 1970), or manner or form of decision by such jurors in a juvenile court proceeding, *In Re Gault*, 387 U.S. 1, 30 (1967); *In re Winship*, 12 L. Ed. 2d 368 (1970).

twenty-four months imprisonment—entitled him to a jury trial.[14]

But despite the fact that petitioners were subject to periods of institutionalization three to six times as long as those authorized in *Duncan* or imposed in *Bloom*, and as much as ten times authorized in *Baldwin*,[15] the Supreme Court of North Carolina held that trial by jury was unavail-

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[14]*Duncan*, *Baldwin* and *Bloom* thus compel the conclusion that were these petitioners adults they would have been entitled to trial by jury, for they were subject to imprisonment in a state institution for periods of from 6 to 10 years—the periods until each reached the age of 21, N.C. Gen. Stat. §§ 110-29-(4), 110-21. (A revision of North Carolina law effective Jan. 1, 1970, found in Art. 23 of § 7A, N.C. Gen. Stat., restricts incarceration in a state institution to the age of 18, unless the juvenile is participating in a vocational program in which case he can be held in custody until completion of the program, N.C. Gen. Stat. § 7A-286 (4) (c). Retroactive application is not, however, specifically provided by the new statute, and juveniles remain subject to juvenile court probation until age 21, N.C. Gen. Stat. §§ 7A-286; 110-22.)

Petitioners were placed on probation until the age of 21 and that probation "may be revoked at any time and the [juvenile] court may make such other disposition of the child as it might have made at the time the child was placed on probation." N.C. Gen. Stat. §§ 110-32, 22. Under these circumstances, surely, nothing in *Frank v. United States*, 395 U.S. 147 (1969) would justify denial of a jury trial to petitioners. The nonjury trial authorized in *Frank* (for a contemnor placed on three years probation) was expressly limited to a situation where (1) a statute contains no maximum sentence and (2) if the defendant's probation were revoked, the maximum sentence that could be imposed (without a jury trial) was limited to six months imprisonment. The Court stated explicitly: "If the statute creating the offense specifies a maximum penalty, then of course that penalty is the relevant period. See *Dyke v. Taylor Implement Mfg. Co.*, 391 U.S. 216 (1968)." *Frank, id.*, at 149 n. 2.

[15]We recognize, of course, that making the right to jury trial turn on the potential nature of the penalty suggests possible anomalous results where the penalty authorized depends on age. The anomaly is more apparent than real, for in every jurisdiction of which we are aware the penalty authorized for a juvenile is at least two years incarceration and would thus always give rise to a right to jury trial.

able to them because their adjudication as delinquents took place in a court "where the investigation is into the status and needs of the child, and the institution to which the child is committed is not a penal character" (sic) (A. 334). Petitioners submit that such a result is untenable in light of (1) this Court's decisions in *Duncan, supra,* and *Baldwin, supra,* that a jury trial "is fundamental in the context of the criminal processes maintained by the American states" (391 U.S. at 149, n. 14); (2) this Court's decision in *Bloom, supra,* that contempts, traditionally punishable without the ordinary safeguards of a criminal trial, "are indistinguishable from ordinary criminal convictions, for their impact on the individual defendant is the same" (*supra* at 201); and (3) this Court's decision in *In Re Gault,* 387 U.S. 1 (1967), and *In Re Winship,* 25 L.ed. 2d 368 (1970), that the essentials of due process apply to juvenile court proceedings.

At the outset it deserves note that, with the exception of the right to public trial, North Carolina law creates an adjudicatory phase of juvenile proceedings materially indistinguishable from that of the ordinary criminal case. N.C. Gen. Stat. §§ 110-29; 7A-285. The charges against petitioners were that they violated state penal laws. The district court which heard petitioners' cases as a juvenile court has exclusive original jurisdiction over adult criminal offenses below the grade of felony, N.C. Gen. Stat. § 7A-272; and, although cases involving juveniles are heard in a separate part of the court, they are tried before a judge who regularly hears criminal cases. N.C. Gen. Stat. §§ 110-23, 24. North Carolina law sharply distinguishes between the adjudicatory phase of the juvenile hearing where "the judge shall find the facts and shall protect the rights of the child and his parents in order to assure due process of law" and the "disposition part of the hearing" which "may be informal", N.C. Gen. Stat. § 7A-285. The juveniles in this case were given notice of the charges, represented by counsel, cross-examined their accusers, and were accorded and exercised the privilege of declining to testify (A. 340). In denying the right to jury trial, the Supreme Court of North

Carolina stated that there "are still many valid distinctions between a criminal trial and a juvenile proceeding" (A. 340); but it failed to enumerate any which pertain to the adjudicatory phase, other than the modified right to a public trial.

Petitioners' submit that where a state employs a fact-finding regime almost identical to that found in criminal prosecutions, and equates the substantive offense charged with one of its criminal laws, then in every respect except label, the system of adjudication created is the "kind of system where the right to jury trial is fundamental." *Duncan, Id.* at 149 n. 14. That, simply, is this case.

In *Kent v. United States*, 383 U.S. 541, 557 (1966), the Court made it clear that the laudable intentions of juvenile court proponents could not do service for fair procedures in children's cases.[16] The first expansive discussion of the constitutional requirements of due process in juvenile proceedings was undertaken in *In Re Gault*, 387 U.S. 1 (1967). The Court there rejected the view that due process was a concept alien to the juvenile courts, and held that a juvenile is entitled to adequate and timely notice of the charges against him, right to counsel, right to confront and cross-examine witnesses, and the privilege against self-incrimination.

Only last term the Court held that the Due Process Clause of the Fourteenth Amendment requires both that the conviction of a criminally accused be based upon proof of guilt beyond a reasonable doubt, and that the same standard be applied to the adjudicatory stage of a juvenile delin-

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[16]There the Court held that a valid waiver of the jurisdiction of the Juvenile Court of the District of Columbia required a hearing, including access by counsel to social records, probation reports and a statement of reasons for the Juvenile Court's decision. Although *Kent* turned on statutory language, the opinion of the Court emphasized that "the basic requirements of due process and fairness must be satisfied in juvenile proceedings," *Id.* at 553.

quency proceeding in which a youth is charged with an act that would constitute a crime if committed by an adult, *In re Winship*, 25 L.ed 2d 368 (1970). The Court reasoned that "the same considerations which demand extreme caution in fact finding to protect the innocent adult apply as well to the innocent child", *Id.* at 376, and refused to distinguish between juvenile and criminal court proceedings on the ground that in New York a delinquency adjudication is not a conviction; or that it affects no right or privilege, including the right to hold office or to obtain a license; or that a cloak of confidentiality is thrown around the proceedings; or that the status of delinquency is not similar to adjudication as a criminal; or that the purpose of delinquency proceedings is not to punish but to save the child. The Court reaffirmed conclusions reached in *Gault, supra*, that neither labelling a proceeding as civil nor the goal of segregating juvenile offenders from adult prisoners obviates the need for due process safeguards in juvenile court where the issue is whether the child will be found delinquent and subjected to potentially serious loss of liberty.

In Winship the Court also rejected the argument that requiring proof beyond a reasonable doubt prior to adjudication of delinquency would destroy beneficial aspects of the juvenile court process. Its opinion emphasized that use of the reasonable doubt standard does not trench upon the child's civil rights, destroy the confidentiality of juvenile court records or proceedings, impair opportunities during post-adjudicatory or dispositional stages for a wide ranging review of the child's history with a view toward his individualized treatment, or alter beneficial procedures distinctive to juvenile proceedings which are employed prior to the adjudicatory hearing, *Id.* at 376, 377. Similarly here, it is petitioners' contention not only that a right to jury trial in a case where a juvenile is charged with committing criminal acts and subject to lengthy imprisonment constitutes a necessary safeguard upon juvenile court fact-finding processes, but, additionally, that allowance of a jury trial, if one is de-

sired, impairs none of those claimed benefits to youth which justify separate treatment in a juvenile court. The relationship is obvious, we think, between the requirement of proof beyond a reasonable doubt and the jury as the trier of fact that traditionally applies that standard "in the context of the criminal processes maintained by the American states," *Duncan v. Louisiana, supra*, 391 U.S. at 149 n. 14. So, by the logic of *Winship*, jury trial is constitutionally required no less in juvenile than in substantially identical adult criminal proceedings.

To be sure, a jury trial tends in a number of ways to contribute to an atmosphere of formality. But where fact-finding is concerned we simply do not understand how formality can be considered a vice. The rules of evidence which would be applied in any proceeding involving a jury represent our law's way of ensuring the most advantageous circumstances for dispassionate and objective determination of factual issues. It is simply unreal in a society where the communications media are full of reports of judicial proceedings and where even the very young have access to a wealth of information concerning the character of judicial proceedings, to deny a youth a procedural protection recognized as fundamental in such proceedings because it smacks of courtroom formality. As Professor Paulsen has put it: "The child and his parents are under no illusion. They know they are in court, not in school or at the doctor's office." Paulsen, *Kent v. United States, The Constitutional Context of Juvenile Cases*, 1966 Supt. Ct. Rev. 167, 186. Dorsen and Rezneck have appropriately put the formality argument to rest:

> Trial by jury is not a matter of form—like a judge's robe or gavel—but of substance, the product of long historical experience and expressing a profound judgment by our legal system about the means of adjudicating criminal behavior. If it thereby introduces an aura of formality or solemnity, it is formality desirable in a matter of such consequence. Further, we submit that such formality is more

> likely to infuse a juvenile with respect for the legal system than to heighten his feelings of alienation and in that sense may ultimately be therapeutic. (*In Re Gault, and The Future of Juvenile Law*, 1 Family Law Quarterly, No. 4, at 23 (1967)).

Indeed, the "formality" of trial by jury guarantees that evidentiary problems which will arise increasingly in juvenile cases can be solved without prejudice to a fair trial. So long as juvenile courts exercised wide latitude to ignore the ordinary evidentiary rules of criminal trials, including constitutional exclusionary rules, exposure of the trier of fact to inadmissible evidence in the course of deciding whether to admit it did not raise the problems that it does in adult trials.[17] But juvenile courts no longer have that same latitude as a result of *Gault*. Absent "a valid confession," a delinquency finding can rest only on evidence given under oath by witnesses subject to confrontation and cross-examination. (387 U.S. at 56). As a result, juvenile court judges will have to hear and rule upon questions of admissibility of evidence more frequently than in past.[18] If the judge hears the evidence in the course of deciding whether to admit it, he may naturally be influenced by it in his determination of the facts, even if he excludes it. Recognition of this likelihood, of course, is a major factor in the election of jury trial in many cases of adults charged with crime. The problem is heightened in cases where the judge has special information which may bias him against the child—

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[17]The Court recognized the critical importance of insulating the trier of fact from inadmissible evidence, particularly if it is a confession, in *Jackson v. Denno*, 378 U.S. 368, 388 (1964). A juvenile should have an independent trier of fact, a jury if he so desires, to guarantee observance of this principle.

[18]See e.g. *In Re Juvenile Delinquents*, 60 Misc. 2d 355, 303 N.Y.S. 2d 406 (N.Y. Fam. Ct. 1969) (Juveniles have right to examine their own statements, their property, and witnesses' statements before trial, to a suppression hearing, and to a preliminary hearing on probable cause.)

information which would not be available to a jury. Consider, for example, cases of juveniles with prior arrests or convictions, or cases where the juvenile has withdrawn a plea of guilty and now seeks a trial. Moreover, in juvenile court there is still a problem with the judge examining a complete social file on the child before even hearing any evidence in the case. See Glen, *Bifurcated Hearings in Juvenile Court*, 16 Crime and Delinquency 255, 259-60 (1970). The availability of jury trial in juvenile cases would provide juveniles the assurance that inadmissible evidence will not influence the determination whether they committed the acts charged.

Trial by jury would also assure—consistently with the Sixth Amendment right of confrontation—that the credibility of witnesses will be evaluated freshly in each case without regard to how often they may have appeared before the court in the past or how well known they may be to the judge. This is a particularly important consideration in juvenile cases where juvenile officers, and even the court's own probation officers who work under the direction of the judge, often appear as witnesses to support the case against the juvenile. Indeed, a jury trial is particularly appropriate in North Carolina where, as in many other jurisdictions, complaints may be screened by a probation officer, and adjusted prior to, or in place of, hearing. Such prescreening procedures may be very valuable to the juvenile, but when a trial judge, or a probation officer accountable to the judge, is involved (See N.C. Gen. Stat. §§ 7A-281, 134; 110-21, 23; cf. § 110-31.) in both investigatory and adjudicatory phases the danger of prejudgment is drastically increased, cf. *In Re Murchison*, 349 U.S. 133 (1955); *In Re Corey*, 72 Cal. Rptr. 115 (C.A. 1st Div. 1968), and the jury's role as a neutral fact-finder all the more essential.

Another argument sometimes raised against the requirement of jury trials is that the privacy and confidentiality of a juvenile court proceedings will be impaired. Of course, a

good deal of the theoretical confidentiality of juvenile court proceedings is illusory. After a detailed discussion, the Court in *Gault*, characterized "the claim of secrecy" as "more rhetoric than reality" (supra, at 24, 25).

At any rate, nothing in a jury trial would impair the confidentiality of juvenile court dispositional records to the extent they are now protected. To the extent a private hearing is of benefit to the juvenile, jury trial would seldom involve any significant incursion on that interest. As the court below put it: "It has never been the practice in such proceedings, here or elsewhere wholly to exclude parents, relatives or friends . . ." (A. 335). To be sure, a jury consists of the representatives of the public,[19] but its pres-

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[19]There is no impediment to a jury trial in juvenile court by reason of petitioners' right to a jury of their peers. This Court has long held that a jury of peers means a jury selected from a source truly representative of the community at large and not the organ of any special group or class, *Glasser v. United States*, 315 U.S. 60, 85-86 (1941). Any attempt to ridicule the concept of trial by jury by implying that, say, 15-year olds would be entitled to a jury of 15-year olds is consequently misplaced.

Although states are not free to set age restrictions without respect to whether the resulting jury system reflects the conscience of the community, the states have a right, indeed an obligation under the Sixth and Fourteenth Amendments, to ensure that jurors are capable of understanding court proceedings and acting competently, *Carter v. Jury Commission of Green County*, 396 U.S. 320, 332-33 (1970). Accordingly, states may set age requirements for jury service and if such requirements are reasonable classifications and do not destroy the function of the jury as the conscience of the community, no one can validly claim that his particular age group must be represented in the source from which the jury is selected. Presumably, young adults will be able to bring to bear such understanding of the problems of minors as is necessary to make sure that the jury is a representative body just as middle-aged persons judge disputes involving the elderly, even where state law discourages jury service by persons over a certain age. Cf. Ala. Code, Tit. 30, § 21. Only if limiting jury service to those over 21 were shown to destroy community representation, would the Constitution require that the jury reflect the attitudes of younger persons. Of course, no questions of the sort are presented by this case.

cense hardly is the same as freely opening juvenile proceedings to the news media on the general spectator; and whether to permit the general public on the news media into Juvenile Court proceedings is a matter in the discretion of the trial judge. N.C. Gen. Stat. §§ 110-24; 7A-285.[20] See also *Task Force Report: Juvenile Delinquency and Youth Crime* 38 (President's Commission on Law Enforcement and the Administration of Justice, 1967). Jury trials would consequently present threat to privacy only in exceptional cases where a special need for complete secrecy exists. In such cases, jurors could be instructed by the trial judge that certain elements of the proceedings before them should not be revealed, but the problem of secrecy is unlikely to arise in any acute form, since where there is an acute need for secrecy, the juvenile and his counsel could simply waive trial by jury.

To deny jury trials to juveniles who want them on the ground that others may want total privacy is not merely unnecessary and other-worldly in light of the present spotty confidentiality of juvenile court proceedings. Unwanted total privacy presents dangers of its own, for there are serious risks encountered by *in camera* proceedings when liberty is at stake, *In Re Oliver*, 333 U.S. 257 (1948). Not only is the potential for arbitrariness in general, and discrimination against the disadvantaged in particular, magnified; but a consequence of total secrecy is that the juvenile courts themselves tend to escape healthy public scrutiny. The serious discrepancies between juvenile court theory and practice, discussed at length in *Gault*, are unlikely to be eliminated until the juvenile courts of the nation are accountable to their communities. If juveniles have a right to a public trial then, of course, considerations of privacy can-

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[20]A distinguished California juvenile court judge has required that court personnel withhold the names of persons under 18 years of age alleged to have committed any public offense from all public media. See *Refusal to Modify Court Rule that Names of Juveniles Be Withheld From Press*, 14 Crime and Delinquency 261 (1968).

not be urged to deny them jury trials.[21] But we make no claim in this Court that public trials are a matter of right in all cases. Our point is the limited one that such benefits as are derived from privacy will not be seriously impaired by allowing a juvenile to elect a jury trial as long as the juvenile judge retains discretion to govern the conduct of persons before him.

Plainly, the most important benefits to youth claimed for the juvenile court system–discretionary pre-screening of complaints and the availability of a wider range of correctional alternatives–will not be affected by the availability of jury trials. Assuming such aspects of juvenile court administration are actually benefits, they would in no way be adversely affected by providing jury trials to young people who wish them. Police or judicial discretion, for example, not to process a complaint or to reduce or alter a charge against a juvenile would not be hampered, see *Gault, supra* at 387 U.S. at 31, n. 48. But abuse of police or judicial discretion to overcharge juveniles from minority groups would be checked by the availability of a jury.[22] Such practices are all too common. A 1970 investigation by the United States Civil Rights Commission, reported many complaints alleging discriminatory treatment of Mexican-American juveniles by the police. "One of the most common was that Anglo juvenile offenders were released without charge to the custody of their parents, while Mexican-American youths were charged with offenses and jailed or

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[21]A juvenile's constitutional right to a public trial has been denied on the ground that privacy is in the best interests of the youth and insulates him from the stigma attached to criminal conviction. See A. 335; *State v. Cronin*, 220 La. 233; 56 So. 2d 242 (1951); *Dendy v. Wilson*, 142 Tex. 460, 179 S.W. 2d 269 (1944).

[22]*Cf. Conover v. Montemuro*, 304 F. Supp. 259 (E.D. Pa., 1969) where the court denied a motion to dismiss a claim that intake standards in a juvenile court were so arbitrary and irrational as to violate due process.

sent to a reformatory." *Mexican-Americans and the Administration of Justice in the Southwest*, 7 (United States Commission on Civil Rights, March 1970). The findings of the Commission were similar to those reached concerning police conduct toward black youth by the Kerner Commission. *Report of the National Advisory Commission on Civil Disorders*, 303 (Bantam, ed.). See also *The Challenge of Crime in a Free Society, supra* at 79.

In *Winship* this Court noted the importance of the distinction between adjudicatory and dispositional phases; North Carolina law recognizes the same distinction, N.C. Gen. Stats. § 7A-285. To the extent juvenile courts have meaningful dispositional alternatives at their command, a jury trial would not, of course, reduce them. On the contrary, the presence of the jury will "minimize the danger that adjudication will be affected by inappropriate considerations," such as "social investigation reports" containing rumor and hearsay (and records of prior crimes) which the President's Commission recommended should not be made known to the judge in advance of adjudication. See *In Re Gault*, supra, 387 U.S. at 57, n. 98. But to the extent that "The dispositional alternatives available even to the better endowed juvenile courts fall far short of the richness and the relevance to individual needs envisioned by the court's founders"[23] *The Challenge of Crime in a Free Society*, 80

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[23]The national failure to provide decent physical facilities for juveniles is one of the premises for the holdings in *Kent v. United States, supra* and *In Re Gault, supra*. Typical of the deplorable conditions in juvenile facilities is this description of those available in Philadelphia, Pennsylvania submitted in a report contracted for by the City by the Fels Institute of Local and State Government in 1966 (*A Plan for Juvenile Detention Facilities in Philadelphia*). After reviewing findings concerning juvenile detention the report concludes:

> The Youth Study Center is badly overcrowded, yet it accommodates only half of the detention care provided. The House of Correction [an adult prison] is used to accommodate most of the overflow capacity and it is totally inadequate as a juvenile facility. The average length of stay far exceeds reasonable standards and the facilities are "clogged"

(President's Commission on Law Enforcement and the Administration of Justice, 1967), the jury's role as fact-finder is added protection against unjustified institutionalization.[24]

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with juveniles who remain in detention longer than 60 days. The problem cannot be solved merely by the construction of additional detention facilities. An overall plan involving significant changes in policies, procedures, staffing, and disposition resources available to the Court is clearly required. (p. 26)

More than two years later the Institute submitted a supplemental report to the City. The situation was much the same and the original plans and recommendations had gone unheeded:

> 195 [juveniles] were at the Philadelphia Prison. This figure is the highest in at least a 16 month period. Length of stay for some juveniles is outrageously high. There is no system of records or controls to provide a basis for the proper administration of juvenile detention. (1968 *Fels Study* at iv).

[24]The 1967 Report of the President's Crime Commission made no specific recommendation concerning provision of jury trials. A paper published in *Juvenile Delinquency* and *Youth Crime* a Commission Task Force Report, enumerates arguments against jury trial. The paper, however, was written before the *Gault* decision and its authors noted that it did not reflect that decision and consequent changes in the conception of the juvenile court process. It is significant that the report leans heavily upon the opinion of Professor Monrad Paulsen, but Professor Paulsen, the noted scholar of the juvenile courts, who concluded that jury trials were not appropriate in 1957, had apparently altered his view a decade later:

> In my view the reformers, in their desire to distinguish sharply between juvenile and criminal proceedings and in the hope that children would be processed as patients in a clinic or given social education as in school, put too much emphasis on the need for informal procedure.
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> Certainly, too, the reformers were mistaken about the opportunity for treatment presented by a few minutes in court. Not many today would agree that a judge who puts his arm around a boy gains "immensely in the effectiveness of his work."
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> The right to jury trial is preserved in some states and the juvenile courts still function and with jury trials, although, in fact, the right is usually waived. Paulsen, *Kent v. United States: The Constitutional Context of Juvenile Cases*, 1966, Supreme Court Review 167, 186.

Indeed, it is primarily because administration of such benefits as may be made available to the juvenile involves the very broadest allowance of discretion at other stages, that the adjudicatory stage of delinquency proceedings must be formal and objective. Under traditional juvenile court practice the judge was all too free to find the child delinquent based on his evaluation of the child's needs rather than his deeds. To the extent this attitude still governs juvenile court judges, there is in fact no practical check on their power unless a jury trial is available.[25]

But experience demonstrates the need for such a check. Studies conducted by the President's Crime Commission in 1967 confirmed the underlying reasoning of this Court's decisions in the *Kent* and *Gault* cases by establishing that the promises held out by the juvenile court have not been fulfilled:

> "It has not succeeded significantly in rehabilitating delinquent youth, in reducing or even stemming the tide of delinquency, or in bringing justice and compassion to the child offender." *(Challenge of Crime in a Free Society, supra* at 80)

The Commission pointed out that among the reasons for the failure of the juvenile courts was society's continued unwillingness to provide manpower, trained specialists, and adequate treatment facilities necessary to carry out its therapeutic ambitions. A particularly disturbing aspect of juvenile court administration was that the juvenile judge–the person upon whom the success of its special role rested –was all too often insufficiently trained for his heavy responsibilities and deprived of the necessary back-up assist-

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[25]It is well to remember "that out of the great universe of criminal controversies," those leading to jury trial "are likely to be the more controversial cases where in the nature of things, the chances of disagreement are increases." Kalven & Zeisel, *The American Jury* 31 (1966).

ance from physicians, social workers, and community workers in devising treatment. Dispositional alternatives were modest, and the institutionalization, which was supposed to set the youngster on the right path, was indistinguishable from adult incarceration and often meant warehousing.[26] Finally, the Commission concluded that even under ideal conditions it was extremely difficult to develop successful methods for preventing serious delinquent acts through rehabilitation. Delinquency, research has made clear, is a pattern of behavior with deep roots in the society itself.[27]

The Commission's profile of the reality of the juvenile court, and of the setting in which it actually operates, has important consequences for any decision concerning the procedural guarantees that should be available to the individual child who is subject to incarceration. If the juvenile court behaves generally in much the same manner as any other criminal court, it is impossible to justify making unavailable the protections which are recognized as constituting due process of law in serious criminal cases.

It is against this background that the view must be appraised of those juvenile court judges who oppose making jury trials available in juvenile cases on the ground that it would burden judicial administration. Like most trial judges, juvenile judges are often grievously overworked and under-equipped for their demanding task. These conditions

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[26] *The Challenge of Crime in a Free Society, supra*, 80. The Commission noted that juvenile courts often behave as any other criminal court and consider deterrence and punishment as well as the welfare of the child in determining disposition. *Ibid.*

[27] The conventional pleas for better legislation, more money and more manpower have been criticized as insufficient to reduce the incidence of delinquency. See Kvaraceus, *Delinquency Prevention: Legislation Finance and Law Enforcement Are Not Sufficient*, 15 Crime and Delinquency, 463 (1969).

are not now the product of jury trials; their cause is the lack of commitment of adequate resources noted by the National Crime Commission; and if lack of adequate resources disables the juvenile courts from performing as they are supposed to perform, this seems to us a strong reason for, not against, the safeguard of jury trial.

But this Court has, in any event, consistently rejected arguments urging limitation *in the definition* of constitutional rights because of crowded court dockets. *Baldwin v. New York*, 38 U.S.L. Week 4554 (June 20, 1970); *Fay v. Noia*, 372 U.S. 391 (1963); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Douglas v. California*, 372 U.S. 353 (1963); *Baxstrom v. Herold*, 383 U.S. 107 (1966); *United States v. Wade*, 388 U.S. 218 (1967); *Gilbert v. California*, 388 U.S. 263 (1967).[28] Long ago Blackstone warned against restriction of the right to jury trial under the guise of expedience:

> "And, however convenient, these may appear at first (as doubtless all arbitrary powers well executed, are to most convenient), yet let it be again remembered, that delays and little inconveniences in the forms of justice, are the price that all free nations must pay for their liberty in more substantial matters; that these inroads upon this sacred bulwark of the nation are fundamentally opposite to the spirit of our constitution. . ." 4 *Blackstone, Commentaries* 350 (Cooley Ed. 1899).

This Court has said that the right to trial by jury "is not held by sufferance, and cannot be frittered away on any plea of state or political necessity." *Ex parte Milligan*, 71 U.S. 2, 123 (1866); and see also *Green v. United States*, 356 U.S. 165, 216 (1958) (Mr. Justice Black dissenting).

[28]Such consideration has come in the limitation to retroactive application of newly defined constitutional rights. Where this has occurred, consideration of reliance by state officials upon prior decisions of the Court and the non-essentiality of newly declared rights to the integrity of the fact-finding process, have been accorded equal if not greater weight. See, *Stovall v. Denno*, 388 U.S. 283 (1967); *Johnson v. New Jersey*, 384 U.S. 719 (1966); *Linkletter v. Walker*, 381 U.S. 618 (1965); *De Stefano v. Woods*, 392 U.S. 631 (1968).

Experience suggests, finally, that practical difficulties which may be encountered are manageable. A substantial number of jurisdictions now make a jury trial available in juvenile court proceedings without ill effect.[29] Most juve-

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[29]The following statutes provide for a jury trial in juvenile court:

Colo. Rev. Stat. Ann. § 37-8-2 (1964) (Jury trial in same way as for selection of juries in county courts for trial of misdemeanors prosecuted in those courts). *D.C. Code Encyclopedia* § 16-2307 (1961) (No jury trial *unless* a jury is demanded by child, parent, guardian.) *Kan. Gen. Stat. Ann.* § 38-808 (Supp. 1967) (Where a child under 18 years commits an act which, if done by a person 18 years or over, would be a felony, judge of juvenile court may refer child to district court for trial by jury. After a verdict that child is delinquent, district court shall remand case to juvenile court for judgment). *Mich. Comp Laws Ann.* Ch. 712A.17 (1968) (Jury trial of 6. Judge may also order a jury trial). *Mont. Rev. Code Ann.* § 10-603 (1947) (Child, parent or guardian, or other person having the care, custody, or control of such child may demand a jury trial. Judge, on his own motion may order a jury trial.). *Okla. Stat. Ann. Tit.* 10 § 1110 (Supp. 1968) (Child, or any person interested in child, shall have right to demand trial by jury. Court may also order a jury trial.) *S.D. Code* § 27-8-31 (1967) (Jury of 6 may try juvenile case). *Tex. Rev. Civ. Stat. Ann.* 2338-1, § 13(6) (Vernon Supp. 1968) (If no jury is demanded, the judge shall proceed with hearing.). *W.Va. Code Ann.* § 49-5-6 (1966) (An interested person may demand, or court on its own motion, may order a jury of 12.). Wisc. Stat. Ann. § 48.25(2) (1957) (Jury trial authorized if demanded). *Wyo. Stat. Ann.* § 14-108(c) (1961) (Jury trial permitted at request of child or his legal guardian.)

In *Nieves v. United States*, 280 F. Supp. 994 (S.D. N.Y. 1968) a three-judge federal court held that juveniles must be afforded a jury trial in delinquency proceedings under the Federal Juvenile Delinquency Act, in part because the Act is in nature a criminal prosecution governed by the Sixth Amendment.

In *Re Rindell*, 2 Cr. L. Rptr. 3121 (1968) the Providence Rhode Island Family Court held that the Fourteenth Amendment required trial by jury be afforded a child charged before the court with an offense that, if committed by an adult, would constitute a felony.

In *Peyton v. Nord*, 79 N.M. 717, 437 P.2d 716 (1968) the Mexico Supreme Court held that juveniles have a right to

nile courts, moreover, dispose of an enormous proportion of their cases short of adjudication, see *Task Force Report: Juvenile Delinquency and Youth Crime, supra* at 14. Often, as in North Carolina, a conference between interested persons is authorized which may result in avoiding subsequent court proceedings, N.C. Gen. Stat. § 7A-281; cf. N. Y. Family Ct. Act § 734 (1963). In those jurisdictions where a jury trial has been available, it is often waived as in adult criminal proceedings.[30] "A fundamental fact about the jury trial is that it is the mode of final disposition for only a small fraction of all criminal prosecutions," Kalven and Zeisel, *The American Jury* 14, 31 (1966). It is commonplace, moreover, that in those urban courts where a backlog of cases would likely develop there is an exceptionally

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jury trial notwithstanding the labeling of their conduct as an act of delinquency. The New Mexico legislature enacted New Mexico Stat. Ann. § 13-8-49 subsequent to the court's decision.

See also *In Re Daniel Richard O.*, 34 A.D. 2d 41 (App. Div. 4th Dept., N.Y. 1970) (Jury Trial granted citing *Duncan*, supra.)

[30]The District of Columbia Juvenile Court *Annual Report* for fiscal 1969 (p. 9) contains the following information:

> In fiscal 1968, 32 jury trials were held, as compared with 3,196 court hearings. In fiscal 1969, there were 28 jury trials, and 2,863 court hearings.

There were 1892 delinquency petitions filed in the Denver, Colorado Juvenile Court in 1969; 13 resulted in jury trials (letter of May 26, 1970 from Judge Ted Rubin to Jeffrey E. Glen, Associate Counsel, National Council on Crime and Delinquency). During 1969 New Mexico juvenile courts conducted "Seven or Eight Jury Trials" (Letter of June 10, 1970 from District Judge Samuel Z. Montoya to Mr. Glen.)

heavy incidence of jury trial waivers.[31] *Ibid.* As jury trials are granted in all American jurisdictions, even in misdemeanor cases (see *Baldwin v. New York*, supra), the requirement of jury trials in juvenile court would not force upon the states a practice with which they are unfamiliar or which they are unable to provide. While the number of jury trials can be expected to rise should this court hold that the Fourteenth Amendment entitles a juvenile to claim trial by jury, it is unlikely that the practical problems involved will be unresolvable,[32] especially in light of this Court's decision approving the use of six man juries in *Williams v. Florida*, 38 U.S.L. Week 4557 (June 10, 1970).

CONCLUSION

Recent studies attest to what trial lawyers have always believed—the efficacy of the jury as a fact-finding mechanism, Kalven and Zeisel, *The American Jury, Passim* (1966). Juvenile court judges have not demonstrated superiority to juries in determining whether a law violation has been committed. Their expertise presumably lies in selection among

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[31]To deny jury trials because of court congestion would be to compromise with assembly line justice where it is most destructive. The poor are most likely to be brought before a juvenile court in urban areas and the procedures and defense services which are made available to them are often unsatisfactory. The vital function of the jury as a protection against such conditions is a major reason for its privileged role in our tradition. Where the volume of cases is heavy, the jury assures the defendant of at least a fresh fact-finding body which is not case-hardened.

[32]See Newman *Conviction: The Determination of Guilt or Innocence Without Trial*, 3-4 (1966); Kalvin and Zeisel, *The American Jury*, 19, (1966). California, for example, provides its citizens with jury trials for all criminal offenses, including traffic violations, but only approximately 3% of all misdemeanor trials are actually conducted before a jury with the figure rising to slightly more than 10% in Los Angeles, *ibid*. See also the figures contained in appellant's brief in *Baldwin v. New York, supra*, p. 33, n. 35.

dispositional alternatives and in formulation of plans of individualized treatment. The issues in the delinquency trial of a law violation are the same as in a criminal trial of the same offense. The jury function of weighing the evidence, evaluating credibility of witnesses, and finding the facts are no more difficult with respect to whether a juvenile committed a crime. "Other values of the jury system—as a bulwark against possible judicial arbitrariness, as an assurance that each case will receive individual attention and not become another item on the assembly line of an overworked judge, and as a means of filtering the enacted criminal law through current community standards of guilt—are as applicable for juvenile as for adult offenders." (Dorsen and Rezneck: *In Re Gault and The Future of Juvenile Law*, *supra* at 33). Moreover, the hard won right of blacks to a trier of fact representative of the entire community is surely as significant a protection to black youth as black adults.

The fact is that an informal and flexible juvenile court procedure has not provided fairness or reliability for the juvenile.[33] Efforts to help youth are not likely to succeed if

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[33]In an exhaustive study of juvenile misconduct prepared for the National Institute of Mental Health by Professor Marvin E. Wolfgang of the University of Pennsylvania Center for Studies in Criminology and Criminal Law a primary conclusion was that experience with juvenile courts and correctional institutions failed to reduce either the volume or intensity of juvenile crime in the studied group. *Delinquency in a Birth Cohort*, Center for Studies in Criminology and Criminal Law (Mimeo 1970) Chapter XIV, pp. 13, 14:

> Finally, we may briefly note that the effect of disposition on the offense histories of the cohort members is unclear. It appears that the criminal justice system has been able to isolate the hard core offender fairly well. *Unfortunately, the product of this encounter with sanctioning authorities is far from desirable. Not only do a greater number of those who receive punitive treatment (institutionalization, fine, or probation) continue to violate the law, but they also commit more serious crimes with greater rapidity than those who experience a less intimate contact with the judicial and correctional systems. Thus we must conclude that the juvenile justice system at its best, has no effect on the subsequent criminal behavior of adolescent boys and at its worst, has a deleterious effect on future behavior.* (emphasis supplied)

they are not based on reliable determinations of factual questions because youths will not then be persuaded that they have been treated justly. Before we permit a state to interfere with the life of an individual even in the name of his best interest, fairness and reliability are essential. Given the history of the juvenile court in America, one must conclude that the "promise of the Juvenile Court to help the child, to rehabilitate him, to lead him into a healthy and constructive life, has not been kept." *The Challenge of Crime in a Free Society, supra* at 85. There is thus no rationale for the withdrawal of trial by jury to juveniles, such as petitioners, subject to long periods of involuntary incarceration.

WHEREFORE, petitioners pray that the judgment below be reversed.

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APPENDIX OF NORTH CAROLINA CONSTITUTIONAL AND STATUTORY PROVISIONS

N.C. CONSTITUTION, ARTICLE I

§ 13. Right of jury.—No person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful persons in open court. The Legislature may, however, provide other means of trial, for petty misdemeanors, with the right of appeal.

§ 7A-278. Definitions.—The terms or phrases used in this article shall be defined as follows, unless the context or subject matter otherwise requires:

(1) "Child" is any person who has not reached his sixteenth birthday.

(2) "Delinquent child" includes any child who has committed any criminal offense under State law or under an ordinance of local government, including violations of the motor vehicle laws or a child who has violated the conditions of his probation under this article.

(3) "Dependent child" is a child who is in need of placement, special care or treatment because such child has no parent, guardian or custodian to be responsible for his supervision or care, or whose parent, guardian or custodian is unable to provide for his supervision or care.

(4) "Neglected child" is any child who does not receive proper care or supervision or discipline from his parent, guardian, custodian or other person acting as a parent, or who has been abandoned, or who is not provided necessary medical care or other remedial care recognized under State law, or who lives in an environment injurious to his welfare, or who has been placed for care or adoption in violation of law.

(5) "Undisciplined child" includes any child who is unlawfully absent from school, or who is regularly disobedient to his parents or guardian or custo-

dian and beyond their disciplinary control, or who is regularly found in places where it is unlawful for a child to be, or who has run away from home.

(6) "Court" means the district court division of the General Court of Justice, except as otherwise specified.

(7) "Custodian" is a person or agency that has been awarded legal custody of a child by a court, or a person other than parents or legal guardian who stands in loco parentis to a child.

§ 7A-279. **Juvenile jurisdiction.**—The court shall have exclusive, original jurisdiction over any case involving a child who resides in or is found in the district and who is alleged to be delinquent, undisciplined, dependent or neglected, or who comes within the provisions of the Interstate Compact on Juveniles except as otherwise provided. This jurisdiction shall be exercised solely by the district judge.

§ 7A-281. **Petition.**—Any person having knowledge or information that a case has arisen which invokes the juvenile jurisdiction established by this article may file a verified petition with the clerk of superior court. The petition shall contain the name, age and address of the child, the name and last known address of his parents or guardian or custodian, and shall allege the facts which invoke the juvenile jurisdiction of the court.

After a petition is filed, any judge exercising juvenile jurisdiction may arrange for evaluation of juvenile cases through the county director of social services or the chief family counselor or such other personnel as may be available to the court. The purpose of this procedure is to use available community resources for the diagnosis or treatment or protection of a child in cases where it is in the best interest of the child or the community to adjust the matter without a formal hearing.

§ 7A-282. Issuance of summons.—After a petition is filed and when directed by the court, the clerk of superior court shall cause a summons to be issued directed to the parents or guardian or custodian and to the child, requiring them to appear for a hearing at the time and place stated in the summons.

§ 7A-283. Service of summons and petition.—The summons and a copy of the petition shall be served upon the parents or either of them or the guardian or custodian, and the child, not less than five days prior to the date scheduled for the hearing, provided that the time provided herein may be waived in the discretion of the judge in the best interest of the child. Service of the summons and petition shall be made personally by leaving a copy of the summons and the petition with the person summoned. If personal service upon a parent is attempted at his last known address but such parent cannot be located, and there is no parent, guardian or custodian available to appear with the child for the hearing, the court shall appoint a guardian ad litem or a guardian of the person to appear with the child.

If the court finds it is impractical to obtain personal service upon the parents, guardian or custodian, the judge may authorize service of summons and petition by mail or by publication, provided that a guardian or custodian shall appear with the child for the hearing if neither parent is present.

If the parent, guardian or custodian is personally served as herein provided and fails without reasonable cause to appear and to bring the child, he may be proceeded against as for contempt of court.

§ 7A-284. Immediate custody of a child.—If it appears from a petition that a child is in danger, or subject to such serious neglect as may endanger his health or morals, or that the best interest of the child requires that the court assume immediate custody of the child prior to a hearing on the merits of the case, the judge may enter an order directing an officer or other authorized person to assume imme-

diate custody of the child. Such an order shall constitute authority to assume physical custody of the child and to take the child to such place or person as is designated in the order. The court shall conduct a hearing on the merits at the earliest practicable time within five days after assuming custody, and if such a hearing is not held within five days, the child shall be released.

§ 7A-285. Juvenile hearing.—Juvenile hearings shall be held in each county in the district at such times and places as the chief district judge shall designate. The general public may be excluded from any juvenile hearing in the discretion of the judge. Reporting of juvenile cases shall be as provided by G.S. 7A-198 for reporting of civil trials.

The juvenile hearing shall be a simple judicial process designed to adjudicate the existence or nonexistence of any of the conditions defined by G.S. 7A-278 (2) through (5) which have been alleged to exist, and to make an appropriate disposition to achieve the purposes of this article. In the adjudication part of the hearing, the judge shall find the facts and shall protect the rights of the child and his parents in order to assure due process of law, including the right to written notice of the facts alleged in the petition, the right to counsel, the right to confront and cross-examine witnesses, and the privilege against self-incrimination. In cases where the petition alleges that a child is delinquent or undisciplined and where the child may be committed to a State institution, the child shall have a right to assigned counsel as provided by law in cases of indigency.

The court may continue any case from time to time to allow additional factual evidence, social information or other information needed in the best interest of the child. If the court finds that the conditions alleged do not exist, or that the child is not in need of the care, protection or discipline of the State, the petition shall be dismissed.

At the conclusion of the adjudicatory part of the hearing, the court may proceed to the disposition part of the hearing, or the court may continue the case for disposition after the juvenile probation officer or family counselor or

other personnel available to the court has secured such social, medical, psychiatric, psychological or other information as may be needed for the court to develop a disposition related to the needs of the child or in the best interest of the State. The disposition part of the hearing may be informal, and the court may consider written reports or other evidence concerning the needs of the child.

The child or his parents, guardian or custodian shall have an opportunity to present evidence if they desire to do so, or they may advise the court concerning the disposition which they believe to be in the best interest of the child.

In all cases, the court order shall be in writing and shall contain appropriate findings of fact and conclusions of law.

§ 7A-286. Disposition.—The judge shall select the disposition which provides for the protection, treatment, rehabilitation or correction of the child after considering the factual evidence, the needs of the child, and the available resources, as may be appropriate in each case. In cases where the court finds a factual basis for an adjudication that a child is delinquent, undisciplined, dependent or neglected, the court may find it is in the best interest of the child to postpone adjudication or disposition of the case for a specified time or subject to certain conditions.

In any case where the court adjudicates the child to be delinquent, undisciplined, dependent or neglected, the jurisdiction of the court to modify any order of disposition made in the case shall continue during the minority of the child or until terminated by order of the court, except as otherwise provided herein, provided that any child subject to the juvenile jurisdiction of the court shall be subject to prosecution in any court for any offense committed after his sixteenth birthday.

The court shall have a duty to give each child subject to juvenile jurisdiction such attention and supervision as will achieve the purposes of this article. Upon motion in the clause or petition, and after notice as provided in this article, the court may conduct a review hearing to determine

whether the order of the court is in the best interest of the court may modify or vacate the order in light of changes in circumstances on the needs of the child.

The following alternatives for disposition shall be available to any judge exercising juvenile jurisdiction:

(1) The judge may dismiss the case, or continue the case in order to allow the child, parents or others to take appropriate action.

(2) In the case of any child who needs more adequate care or supervision, or who needs placement, the court may:

a. Require that the child be supervised in his own home by the county department of social services, juvenile probation officer, family counselor or such other personnel as may be available to the court subject to such conditions applicable to the parents or the child as the court may specify; or

b. Place the child in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or

c. Place the child in the custody of the county department of social services in the county of his residence, or in the case of a child who has legal residence outside the State, in the temporary custody of the county department of social services in the county where the child is found so that said agency may return the child to the responsible authorities.

In any case where the court removes custody from a parent, the court may order any parent who appears in court with such child to pay such support for the child as may be reasonable under the circumstances, or after notice to the parent as provided in this article, the court may hold a hearing and order such parent to pay such support as may be reasonable under the circumstances.

(3) In the case of any child who is alleged to be delinquent or undisciplined and where the court finds it necessary that such child be detained in secure custody for the protection of the community or in the best interest of the child before or after a hearing on the merits of the case, the court may order that such child be detained in a juvenile detention home as provided in G.S. 110-24, or if no juvenile detention home is available, in a separate section of a local jail which meets the requirements of G.S. 110-24, provided the court shall notify the parent, guardian or custodian of the child of such detention. No child shall be held in any juvenile detention home or jail for more than five days without a hearing under the special procedures established by this article. If the judge orders that the child continue in the detention home or jail after such hearing, the court order shall be in writing with appropriate findings of fact.

(4) In the case of any child who is delinquent or undisciplined, the court may:

a. Place the child on probation for whatever period of time the court may specify, and subject to such conditions of probation as the court finds are related to the needs of the child and which the court shall specify, under the supervision of the juvenile probation officer or family counselor; or

b. Continue the case in order to allow the family an opportunity to meet the needs of the child through more adequate supervision, or placement in a private or specialized school, or placement with a relative, or through some other plan approved by the court; or if the child is delinquent, the court may

c. Commit the child to the care of the North

Carolina Board of Juvenile Correction to be assigned to whatever facility operated by such Board as the Board or its administrative personnel may find to be in the best interest of the child. Said commitment shall be for an indefinite term, not to extend beyond the eighteenth birthday of the child, as the Board or its administrative personnel may find to be in the best interest of the child, provided that if a child is engaged in a vocational training program when he becomes eighteen years of age, the Board may extend the indefinite term of such child beyond the eighteenth birthday until the vocational training program is completed. The Board or its administrative personnel shall have final authority to determine when any child who has been admitted to any facility operated by the Board has sufficiently benefitted from the program as to be ready for release. At the end of any term, the Board shall notify the court that the child is ready for release and shall plan for the return of the child to the community in cooperation with the juvenile probation officer or the family counselor or such other appropriate personnel as may be available. If the Board finds that any child committed to its care is not suitable for the program of any facility operated by the Board, or that further court action is needed to protect the best interest of a child at the end of his term, the Board shall make a motion in the cause so that the court may enter an appropriate order.

(5) In any case, the court may order that the child be

examined by a physician, psychiatrist, psychologist or other professional person as may be needed for the court to determine the needs of the child. If the court finds the child to be in need of medical, surgical, psychiatric, psychological or other treatment, the court may allow the parents or other responsible persons to arrange for such care. If the parents decline or are unable to make such arrangements, the court may order the needed treatment, surgery or other needed care, and the court may order the parents or other responsible parties to pay the cost of such care, or if the court finds the parents are unable to pay the cost of such care, such cost shall be a charge upon the county when approved by the court. If the court finds the child to be in need of institutional care because of mental illness or mental retardation, the court may commit the child to the appropriate institution operated by the State, provided two physicians certify in writing that such commitment is in the best interest of the child and the State. After such commitment, the child may be released only by the governing board or administrative personnel of such State institution, who shall report on the court from time to time on the progress of such child and who shall return the child to the court upon release during his minority for such further orders as the court finds to be in the best interest of the child.

(6) In any case where there is no parent to appear in a hearing with the child or where the court finds it would be in the best interest of the child, the court may appoint a guardian of the person for the child, who shall operate under the supervision of the court with or without bond, and who shall file only such reports as the court shall require. Such guardian of the person shall have the care,

custody and control of the child or may arrange a suitable placement for the child, and may represent the child in legal actions before any court. Such guardian of the person shall also have authority to consent to certain actions on the part of the child in place of the parents, including but not limited to marriage, enlisting in the armed forces, major surgery, or such other actions as the court shall designate where parental consent is required. The authority of the guardian of the person shall continue for whatever period of time the court shall designate during the minority of the child.

§ 7A-287. Juvenile records.—The court shall maintain a complete record of all juvenile cases to be known as the juvenile record, which shall be withheld from public inspection and may be examined only by order of the judge, except that the child, his parents, guardian, custodian and attorney, or other authorized representative of the child shall have a right to examine the child's juvenile record.

The juvenile record may be divided into two parts, social and legal:

(1) The social part of the juvenile record may include family background information or reports of social, medical, psychiatric, psychological or other information concerning a child or his family, or a record of the probation reports of a child or interviews with his family, or other information which the judge finds should be protected from public inspection of the best interest of the child. The social part of the juvenile record may be filed separate from other records of the court under rule of the Administrative Office of the Courts.

(2) The legal part of the record includes the summons, petition, court order, written motions, the transcript of the hearing and other papers filed in the proceeding.

An adjudication that a child is delinquent or undisciplined shall not disqualify the child for public office nor be considered as conviction of any criminal offense.

§ 14-3. Punishment of misdemeanors, infamous offenses, offenses committed in secrecy and malice or with deceit and intent to defraud.–

(a) Except as provided in subsection (b), every person who shall be convicted of any misdemeanor for which no specific punishment is prescribed by statute shall be punishable by fine, by imprisonment for a term not exceeding two years, or by both, in the discretion of the court.

(b) If a misdemeanor offense as to which no specific punishment is prescribed be infamous, done in secrecy and malice, on with deceipt and intent to defraud, the offender shall, except where the offense is a conspiracy to commit a misdemeanor, be guilty of a felony and punishable as prescribed in § 14-2.

§ 110-21. Exclusive original jurisdiction over children.– The superior courts shall have exclusive original jurisdiction of any case of a child less than sixteen years of age residing in or being at the time within their respective districts:

(1) Who is delinquent or who violates any municipal or State law or ordinance or who is truant, unruly, wayward, or misdirected, or who is disobedient to parents or beyond their control, or who is in danger of becoming so; or

(2) Who is neglected, or who engages in any occupation, calling, or exhibition, or is found in any place where a child is forbidden by law to be and for permitting which an adult may be punished by law, or who is in such condition or surroundings or is under such improper or insufficient guardians or control as to endanger the morals, health, or general welfare of such child; or

(3) Who is dependent upon public support or who is destitute, homeless, or abandoned, or whose custody is subject to controversy.

When jurisdiction has been obtained in the case of any child, unless a court order shall be issued to the contrary, or unless the child be committed to an institution supported and controlled by the State, it shall continue for the purposes of this article during the minority of the child. The duty shall be constant upon the court to give each child subject to its jurisdiction such oversight and control in the premises as will conduce to the welfare of such child and to the best interest of the State.

§ 110-22. Probation conditions; revocation.—When the court places any child on probation, the court order shall specify the conditions of probation and the period of time the child shall remain on probation. The conditions of probation and the period of time the child shall remain on probation shall be designed by the court to meet the needs of the child and may include any of the following or such other conditions of probation as the court may order in the best interest of the child:

(1) That the child shall remain on good behavior and not violate any laws;
(2) That the child attend school regularly;
(3) That the child not associate with specified persons or be in specified places;
(4) That the child report to the probation officer as often as required by the probation officer;
(5) That the child make specified financial restitution or pay a fine;
(6) That the child be employed regularly if not attending school.

The court may review the progress of any child on probation at any time during the period of probation. The conditions of probation or the period of time on probation may be modified as may be appropriate in a particular case, provided there is notice and a hearing as provided by article 23 of chapter 7A. If a child violates the conditions of his probation, such child may be required to appear before the court after notice, and the court may make any dispo-

sition of the matter that it might have made when the child was placed on probation. At the end of a child's period of probation, the child shall appear after notice of a hearing with the juvenile probation officer so that the court may evaluate the child's need for continued supervision, and the judge may terminate the probation, continue the child on probation under the same or modified conditions for a specified term, or enter such other order as the court may find to be in the best interest of the child.

§ 110-23. Definitions of terms.—(a) The term "adult" shall mean any person sixteen years of age or over.

(b) The term "child" shall mean any minor less than sixteen years of age.

(c) The term "court" when used in this article without modification shall refer to the juvenile courts to be established as herein provided.

(d) The term "judge" when used in this article shall refer to the clerk of the superior court acting as judge of the juvenile court, or to the other appointed judge, or to the judge of the joint city and county juvenile court elected as provided in § 110-22.

§ 110-24. Detention homes.—It shall be unlawful for any child coming within the provisions of article 23 of chapter 7A to be placed in any jail, prison or other penal institution where such child will come into contact with adults charged with or convicted of crimes, except as herein provided.

Children who are alleged or adjudicated to be delinquent or undisciplined and who require secure custody for the protection of the community or in the best interest of the child may be temporarily detained in a juvenile detention home, which shall be separate from any jail, lockup, prison or other adult penal institution. A juvenile detention home shall be located in a building designed to provide secure custody and shall have such personnel as may be necessary to provide for the supervision and safety of the children being detained. A detention home shall be operated as a

family home according to the standards applicable to juvenile detention facilities adopted by the State Board of Social Services under G.S. 153-52 and under the supervision of the judges exercising juvenile jurisdiction in the district. Personnel employed in a detention home may be appointed by the unit of government which operates the program, except that such appointments shall be approved by the State Department of Social Services. The program of a detention home shall be designed as far as possible to provide wholesome activities in the best interest of the children placed therein.

If there is no detention home available, the judge may arrange for the care of a child requiring secure custody in a private home, a foster home or in any other available child-care facility. When the judge finds there is a pressing need that a child be held in secure custody and there is no juvenile detention home available to the judge, the judge may order the temporary detention of such child in any section of a local jail which is so arranged that the child cannot converse with, see or be seen by the adult population of the jail while being detained, provided that the jailer or other personnel responsible for administration of the jail shall provide close supervision of any child so detained for the protection of the child.

§ 110-25. Petition to bring child before court.—Any person having knowledge or information that a child is within the provisions of this article and subject to the jurisdiction of the court, may file with the court a petition verified by affidavit, stating the alleged facts which bring such child within such provisions. The petition shall set forth the name and residence of the child and of the parents, or the name and residence of the person having the guardianship, custody, or supervision of such child, if the same be known or ascertained by the petitioner, or the petition shall state that they are unknown, if that be the fact.

§ 110-26. Issuance of summons; traveling expenses allowed.—Upon the filing of the petition or upon the taking

of a child into custody, the court may forthwith, or after an investigation by a probation officer or other person, cause to be issued a summons signed by the judge or the clerk of the court directed to the child, unless such child has been taken into custody, and to the parent, or, in case there is no parent, to the person having the guardianship, custody, or supervision of the child, or the person with whom the child may be, requiring them to appear with the child at the place and time stated in the summons to show cause why the child should not be dealt with according to the provisions of this article.

The judge may in his discretion authorize the payment of necessary traveling expenses incurred by any witness or person summoned or otherwise required to appear at the hearing of any case coming within the provisions of this article. Such expenses shall be a charge upon the county in which the petition is filed.

§ 110-27. Custody of child may be immediate; release; bail.—If it appears from the petition that the child is embraced within subdivision (1) of § 110-21, or is in such condition or surroundings that the welfare of the child requires that its custody be immediately assumed, the court may endorse or cause to be endorsed upon the summons a direction that the officer serving the same shall at once take such child into his custody.

In the case of any child who has been taken into custody or pending the final disposition of any case, the child may be released in the custody of a parent or other person having charge of the child or in the custody of a probation officer or other person appointed by the court, to be brought before the court at the time designated. Any child embraced in this article may be admitted to bail as provided by law. When not released as herein provided, such child, pending the hearing of the case, shall be detained in such place of detention as hereinafter provided for.

§ 110-29. Hearing; disposition of child.—Upon the return of the summons or other process or after any child has been

taken into custody, at the time set for the hearing, the court shall proceed to hear and determine the case in a summary manner. The court may adjourn the hearing from time to time and inquire into the habits, surroundings, condition and tendencies of the child so as to enable the court to render such order or judgment as shall best conserve the welfare of the child and carry out the objects of this article. In all cases the nature of the proceedings shall be explained to the child and to the parents or the guardian or person having the custody or the supervision of the child. At any stage of the case the court may, in its discretion, appoint any suitable person to be the guardian ad litem of the child for the purposes of the proceeding.

The court, if satisfied that the child is in need of the care, protection or discipline of the State, may so adjudicate, and may find the child to be delinquent, neglected, or in need of more suitable guardianship. Thereupon the court may:

(1) Place the child on probation subject to the conditions provided hereinafter; or

(2) Commit the child to the custody of a relative or other fit person of good moral character, subject, in the discretion of the court, to the supervision of a probation officer and the further orders of the court; or

(3) Commit the child to the custody of the county department of public welfare of the county wherein said child has legal residence to be placed by said department in a suitable home as designated in subdivision (4) of this section. The county department of public welfare to which custody is awarded shall be responsible for the general oversight and supervision of the child and shall pay the cost of care for said child. The juvenile court taking jurisdiction shall have the authority to determine the legal residence of the child and to award custody of said child to the county welfare department of the county which has been

determined by the court to be the legal residence of the child. Provided, however, that if it should appear to the judge of the juvenile court exercising jurisdiction over said child that the child might be a legal resident of some county other than the county in which said court is sitting, that the judge of said court shall not enter any final order pertaining to the custody of said child until at least ten days' notice shall have been given to the county welfare department of any county which shall appear to be the county of legal residence of said child. The county welfare department thus given ten days' notice shall have an opportunity to appear and show cause, if any it has, why the legal residence of said child should not be found to be in its county; or

(4) Commit the child to a suitable institution maintained by the State or any subdivision thereof, or to any suitable private institution, society or association incorporated under the laws of the State and approved by the State Board of Public Welfare authorized to care for children, or to place them in suitable family houses; or

(5) Render such further judgment or make such further order of commitment as the court may be authorized by law to make in any given case.

(6) If a child of fourteen years of age be charged with a felony for which the punishment as now fixed by law cannot be more than ten years in prison his case shall be investigated by the probation officer and the judge of the juvenile court as provided for in this article, unless it appears to the judge of the juvenile court that the case should be brought to the attention of the judge of the superior court, in which case the child shall be held in custody or bound to the next term of the superior court as now provided by law.

§ 110-32. Probation; conditions; revocation.—When the co places any child or adult on probation as provided in this rticle it shall determine the conditions of probation, which may be modified by the court at any time. A child shall remain on probation for such period as the court shall determine during the minority of such child. An adult shall remain on probation for such period as the court shall determine, not to exceed five years. The conditions of probation shall be such as the court shall prescribe, and may include among other conditions any or several of the following: That the probationer shall indulge in no unlawful or injurious habits; shall avoid places or persons of disreputable or harmful character; shall report to the probation officer as directed by the court or probation officers; shall permit the probation officer to visit him in a reasonable manner at his place of abode or elsewhere; shall answer any reasonable inquiries on the part of the probation officer concerning his conduct or condition; shall, if a child of compulsory school age, attend school regularly; shall, if an adult or a child who does not attend school, work faithfully at suitable employment; shall remain or reside within a specified place or locality; shall pay a fine in one or several sums; shall make restitution or reparation to the aggrieved parties for actual damages or losses caused by an offense upon such conditions as the court shall determine; and shall make payment for the support of any lawful dependents as required by the court.

Any person on probation may at any time be required to appear before the court, and in case of his failure to do so when properly notified by the probation officer, the court may issue a warrant for his arrest. In the case of a child on probation, if the court believes that the welfare of such child will thereby be promoted, the probation may be revoked at any time and the court may make such other disposition of the child as it might have made at the time

the child was placed on probation. An adult on probation who violates any of the conditions thereof may be arrested upon a warrant issued by the court and the court may impose any penalties which it might have imposed at the time the defendant was placed on probation.